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Appeal from Circuit Court, Lee County.

Application by W. R. Wilder and another for the establishment of a public road over the lands of M. B. Wygal and others. There was an order of the circuit court establishing the road, and M. B. Wygal appeals. Affirmed.

Pennington Bros., of Pennington Gap, for appellant.

Duncan & Cridlin, of Jonesville, and *J. C. Noel*, of Pennington Gap, for appellees.

VIRGINIA RY. & POWER CO. v. McDEMMICK.

Nov. 11, 1915.

[86 S. E. 744.]

1. Trial (§ 203*)—Instructions—Theories of Case.—Where there are two conflicting theories of a case, one supported by plaintiff and the other by defendant, and the theory of one party has been presented by instructions, the other party is entitled to an instruction presenting the principles of law applicable to his theory, provided there is evidence sustaining it.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 477-479; Dec. Dig. § 203.* 7 Va.-W. Va. Enc. Dig. 704.]

2. Carriers (§ 280*)—Carriage of Passengers—Care Required.—A carrier must exercise the highest degree of care and diligence in guarding the safety of its passengers, and the slightest imputation of negligence against which human care and skill can provide makes it responsible for any defect of machinery or any negligence of its servants, warranting a recovery for an injury to a passenger proximately resulting therefrom, but it is not an insurer of the safety of its passengers.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1085-1092, 1098-1103, 1105, 1106, 1109, 1117; Dec. Dig. § 280.* 2 Va.-W. Va. Enc. Dig. 700.]

3. Carriers (§ 284*)—Carriage of Passengers—Care Required.—A carrier must protect its passengers against violence of its servants or other passengers and strangers, when such violence may be reasonably expected and prevented, but it is not liable for damages where it is not shown that it had notice of any acts justifying the expectation that a wrong would be committed.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1125, 1127-1135, 1173, 1222; Dec. Dig. § 284.* 2 Va.-W. Va. Enc. Dig. 700.]

4. Carriers (§ 321*)—Injuries to Passengers—Evidence—Instructions.—Where, in an action for injury to a street car passenger kicked by a negro passenger, the theory of the case of the carrier was that

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the passenger boarded the car standing at a place not a regular stopping place and not in service for receiving passengers, but while the conductor was replacing the trolley which had jumped the wire, and that prior to the injury the negro passenger had not so acted as to menace the safety of passengers, the court must charge that if the injury to the passenger was unexpected and inflicted at a time the carmen could not protect him therefrom, there could be no recovery, where under the instructions given the jury could find for the passenger, though they might believe that the injury to the passenger was unexpected, and inflicted at a time when the carmen were unable to protect him.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1247, 1326-1336, 1343; Dec. Dig. § 321.* 2 Va.-W. Va. Enc. Dig. 721.]

Error to Circuit Court of City of Norfolk.

Action by Charles McDemmick against the Virginia Railway & Power Company. There was a judgment for plaintiff, and defendant brings error. Reversed, and remanded for new trial.

H. W. Anderson, of Richmond, *W. H. Venable*, of Norfolk, and *A. D. Christian*, of Richmond, for plaintiff in error.

Jas. G. Martin and *Wm. F. Clarke*, both of Norfolk, for defendant in error.

BOWE et al. v. BOWE'S ADM'R et al.

Nov. 11, 1915.

[86 S. E. 856.]

1. Wills (§ 587*)—Property Disposed of Included—After-Acquired Property.—A will containing a residuary clause, though written during the life of testatrix's husband, passes all her property, including that which she took under his will, where his real estate was after his death transferred to her on the land books, and she took possession of and exercised ownership over it, and the greater part of his personal estate passed into her actual possession.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1279, 1281-1291; Dec. Dig. § 587.* 13 Va.-W. Va. Enc. Dig. 801.]

2. Wills (§ 497*)—Construction—Legatees.—Grandchildren to whom bequests are made in the first of four separate papers constituting an holograph will do not take under the second of these, of the same date, naming no grandchildren, but giving \$200 "to each of my grandchildren not named in this, my will."

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1080-1086; Dec. Dig. § 497.* 13 Va.-W. Va. Enc. Dig. 805.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.